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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BRIAN ECHARD, *on behalf of himself and all
others similarly situated,*

Plaintiffs,

vs.

WELLS FARGO BANK, N.A., and WELLS
FARGO & CO.,

Defendants

COMPLAINT – CLASS ACTION

JURY DEMAND

Plaintiff Brian Echard, individually and on behalf of all others similarly situated, hereby files this class action complaint against Defendants Wells Fargo Bank, N.A. (“Wells Fargo Bank”) and Wells Fargo & Co (“WFC”) (collectively, “Wells Fargo” or “Defendants”). Plaintiff makes the allegations herein upon personal knowledge as to himself and his own acts, and upon information and belief and based upon investigation of counsel as to all other matters, as set forth herein.

I. INTRODUCTION

1. Throughout our nation’s history, members of our military services have been asked to make many sacrifices for our nation. These American heroes leave family, friends and the comforts of civilian life to answer our country’s call to duty. Many also leave behind

1 employment, a career, and financial security. For some the sacrifices go much further and can
2 cause lasting or permanent impacts on the servicemembers and their families.

3 2. In return for these sacrifices, our nation provides veterans certain ongoing benefits
4 and protections. One important benefit is that servicemembers and veterans can obtain assistance
5 in securing a mortgage to buy a home through a Veterans Administration (“VA”) guaranteed
6 loan.

7 3. The VA loan program goes beyond assistance in obtaining a loan. It also provides
8 veterans with protections and assistance throughout the period of the loan. These protections are
9 guaranteed by statutes, regulations, and detailed guidance provided by the VA.

10 4. In addition to the protections guaranteed by law, military home borrowers have a
11 reasonable expectation of even greater care from mortgage lenders and servicers like Wells
12 Fargo. Wells Fargo, like other lenders, promises to go further in assisting military borrowers to
13 overcome bumps in the road that could otherwise lead to foreclosure or other harms. The bank
14 promises to provide military home borrowers with a “dedicated team” of financial professionals
15 and “expanded mortgage benefits that go beyond what the SCRA requires,”¹ including
16 “mortgage assistance to those who can't keep up with payments.”²

17 5. In 2020, through no fault of their own, military borrowers throughout the nation
18 were faced with financial hardship because of the COVID-19 pandemic. This was a time when
19 these American heroes needed Wells Fargo to provide the “dedicated team,” “dedicated
20 attention” and “support” it promised.

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24 ¹ <https://www.wellsfargo.com/mortgage/manage-account/payment-help/military> (last visited January 28, 2021).

² <https://www.wellsfargo.com/mortgage/manage-account/payment-help/military> (last visited January 28, 2021).

1 6. Instead of living up to its obligation to military borrowers under the law and the
2 bank's promises, Wells Fargo found a way to profit off these military borrowers by wrongfully
3 enrolling them into a forbearance program without their informed and legal consent that would
4 only increase their financial hardship.

5 7. Wells Fargo's "forbearance scam" harmed military and non-military customers
6 across the nation, but the fraud against military borrowers is distinct and particularly egregious
7 because they are entitled to special protections under federal law, numerous state laws, and under
8 Wells Fargo's explicit and implicit promises to support and protect these customers.

9 8. As described herein, Wells Fargo twisted a national crisis and a government relief
10 program into a way to make profit at the expense of its military and nonmilitary customers. As a
11 result of the COVID-19 outbreak, Congress passed the Coronavirus Aid, Relief and Economic
12 Security ("CARES") Act in March 2020, which among other things, provides relief to millions
13 of Americans who are struggling to pay their mortgage payment as a result of the economic
14 difficulties caused by the pandemic.

15 9. In part, the CARES Act instructed mortgagees and servicers to create mortgage
16 forbearance provisions for all federally-backed mortgages. The CARES Act makes clear that
17 participating in a COVID-19 mortgage forbearance program is entirely voluntary; that is, a
18 mortgagor must be informed of the various terms and conditions of the program and then
19 affirmatively decide to enter the program.

20 10. Congress intentionally included a volitional act on the part of the mortgagor to opt
21 into forbearance. This is because mortgage forbearance has serious consequences for
22 homeowners, including an inability to obtain additional credit and/or to finance any existing
23 loans.

1 11. Per the Consumer Financial Protection Bureau (“CFPB”), before a bank servicing
 2 a loan can grant forbearance, it must receive a request for such relief and an attestation of a
 3 COVID-19-related financial hardship from the borrower.

4 REQUIREMENTS FOR SERVICERS.— (1) IN GENERAL.— *Upon*
 5 *receiving a request for forbearance from a borrower under subsection*
 6 *(b), the servicer shall with no additional documentation required other*
 7 *than the borrower’s attestation to a financial hardship caused by the*
 8 *COVID–19 emergency* and with no fees, penalties, or interest (beyond the
 9 amounts scheduled or calculated as if the borrower made all contractual
 10 payments on time and in full under the terms of the mortgage contract)
 charged to the borrower in connection with the forbearance, provide the
 forbearance for up to 180 days, which may be extended for an additional
 period of up to 180 days at the request of the borrower, provided that, the
 borrower’s request for an extension is made during the covered period,
 and, at the borrower’s request, either the initial or extended period of
 forbearance may be shortened.³

11 12. Wells Fargo has unilaterally, without informed and legal consent, and without
 12 requesting or receiving any financial hardship attestation, opted unwitting borrowers into its
 13 COVID-19 mortgage forbearance program.

14 13. Additionally, when borrowers logged onto Wells Fargo’s website to view their
 15 accounts, the webpage included a link at which borrowers could obtain information regarding
 16 Wells Fargo’s COVID-19 relief program. Upon the click of a button which made no mention of
 17 forbearance, unsuspecting borrowers’ accounts were placed into forbearance without their
 18 informed knowledge or consent.

19 14. Many Wells Fargo mortgage customers who were placed into Wells Fargo’s
 20 COVID-19 mortgage forbearance program received no notice that Wells Fargo had placed their
 21 mortgages into forbearance. Some borrowers only found out (if at all) when they attempted to
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 24 ³ <https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf> (last visited January 27, 2021) (emphasis added).

1 apply for credit, including for refinancing of their mortgage, and were denied, then learning from
2 the credit report that their mortgage loans were in forbearance. Others found out when they
3 attempted, but were unable, to make regularly scheduled mortgage payments with Wells Fargo.

4 15. When Wells Fargo did send their customers a template notice informing them that
5 Wells Fargo had placed their loans into forbearance, the notice was both insufficient and
6 inaccurate.

7 16. Furthermore, after illegally placing customers' accounts into forbearance, Wells
8 Fargo perpetuated the problems for these customers by failing to properly apply payments that
9 had been made to the mortgage, failing to properly report payments actually made to credit
10 agencies, and failing to provide accurate and legally sufficient periodic statements to these
11 customers.

12 17. For military borrowers, this scam is even more indefensible. Wells Fargo had
13 promised to provide military borrowers with "support," including a "dedicated team" of financial
14 advisers. Yet, rather than providing any of those services when they were needed, Wells Fargo
15 ran the same scam on the military customers.

16 18. In addition, these military customers had additional legal rights available to them
17 to address financial difficulties. But Wells Fargo never disclosed any of those protections or
18 rights to the military customers before enrolling them into the forbearance program.

19 19. As a result of being placed into forbearance, these homeowners, including
20 Plaintiff and the putative class, suffered damages including but not limited to an inability to
21 access credit to finance to lower interest rates, which is especially egregious during this time in
22 which mortgage interest refinance rates are historically low. They also must deal with the
23 difficult situation of removing their mortgages from a program they did not want.
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1 20. Interest rates are at all-time lows, and many homeowners are seeking to take
2 advantage of these historically low rates by refinancing. If an account is placed into forbearance,
3 those borrowers cannot typically refinance for many months, if not years, even after bringing the
4 account current.

5 21. This forbearance scam profited Wells Fargo in a number of ways, including
6 because the bank receives additional compensation for each loan placed in forbearance. In
7 addition, Wells Fargo directly profits from its customers inability to refinance – the harm
8 inflicted on the customers – because this allows Wells Fargo to retain these mortgages at above-
9 market rates. These customers are damaged, and Wells Fargo profits, by the difference between
10 the lifetime costs of their over-market mortgage and the mortgage that they would have been
11 entitled to if they had not been wrongfully placed in forbearance.

12 22. Wells Fargo has not denied many of these core allegations, stating via its
13 spokesperson Tom Goyda that “[i]n the spirit of providing assistance, we may have
14 misinterpreted customers’ intentions in a small number of cases.”⁴ Although Wells Fargo did not
15 identify the complete number of borrowers who were unwillingly placed into its forbearance
16 program, it reported having received 1,600 complaints of unwanted forbearances.⁵

17 II. JURISDICTION AND VENUE

18 23. Plaintiffs invoke the jurisdiction of this Court pursuant to the Truth in Lending
19 Act (“TILA”), 15 U.S.C. § 1601; the Real Estate Settlement Procedures Act (“RESPA”), 12
20 U.S.C. § 22601; the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681; and the

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23 ⁴ <https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/> (last visited January 27, 2021).

24 ⁵ <https://www.nbcnews.com/business/personal-finance/1-600-customers-say-wells-fargo-paused-their-mortgage-payments-n1241620> (last visited January 27, 2021).

1 Servicemembers Civil Relief Act (“SCRA”), 50 U.S.C. §§ 3901 *et seq.* (formerly 50 U.S.C. App.
2 §§ 501 *et seq.*).

3 24. In addition, this Court has original jurisdiction pursuant to the Class Action
4 Fairness Act, 28 U.S.C. § 1332(d)(2) and (6), because the aggregate claims of the proposed class
5 members exceed \$5,000,000, and at least one Class member resides in a different state than
6 Defendants.

7 25. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiff’s
8 common law claims and state law claims because those claims are so related to the claims within
9 the Court’s original jurisdiction that they form a part of the same case or controversy under
10 Article 3 of the U.S. Constitution.

11 26. This Court has personal jurisdiction over Defendants, as they purposefully availed
12 themselves of the privilege of conducting activities in Washington and established minimum
13 contacts sufficient to confer jurisdiction. Defendants conduct business activities which are the
14 subject of the present complaint in Washington.

15 27. Venue is proper in this Court, as Defendants conduct business within the district,
16 and some business activities which are the subject of this complaint occurred therein.

17 III. PARTIES

18 28. Plaintiff Brian Echard is a resident of Westerville, Ohio,

19 29. Plaintiff’s mortgage is serviced by Wells Fargo.

20 30. Defendant Wells Fargo & Co. (“WFC”) is a diversified financial services
21 company that provides banking, insurance, investments, mortgage banking, and consumer
22 finance through banking stores, the internet, and other distribution channels to customers,
23 businesses, and other institutions in all 50 states and in other countries.

24 31. Defendant WFC is the parent corporation of Defendant Wells Fargo Bank, N.A.

1 36. Wells Fargo maintains a website dedicated to wooing military borrowers into its
2 mortgage programs, promising to provide “Dedicated attention. Specialized services.” It claims
3 “We appreciate the dedication of our nation’s military personnel and their families. We are
4 committed to providing home financing options to meet the unique needs of the military and
5 veteran community.”⁸ The bank promises:

6 **A dedicated team – just for you.** We have a team of financial professionals who’ve
7 been specially trained to meet your specific needs. Their understanding of military and
8 veteran culture makes them uniquely qualified to help you achieve your homeownership
9 goals.

10 That dedicated webpage also promises:

11 **Help for military personnel**

12 Active-duty service members and their families facing payment challenges may qualify
13 for special military benefits.

14 37. In addition, Wells Fargo states that it promises to provide military borrowers with
15 protections that goes beyond those required by law: “The Servicemembers Civil Relief Act
16 (SCRA) may offer protection or relief to members of the military, their spouses, partners, and
17 dependents. Wells Fargo appreciates the service of America's military personnel. That’s why we
18 offer expanded mortgage benefits that go beyond what the SCRA requires.”⁹ These include:

19 **Expanded benefits**

20 In addition to the benefits offered under SCRA, Wells Fargo helps service members
21 by:

- 22 • Providing mortgage assistance to those who can't keep up with payments.
- 23 • Applying foreclosure protection if service members are deployed in a hazardous
24 area or deployed internationally in readiness for military action.¹⁰

25 ⁸ <https://www.benefits-mortgage.com/loans/mil0307/loan-programs/military-loans.page> (last visited January 28, 2021).

26 ⁹ <https://www.wellsfargo.com/mortgage/manage-account/payment-help/military> (last visited January 28, 2021).

27 ¹⁰ <https://www.wellsfargo.com/mortgage/manage-account/payment-help/military> (last visited January 28, 2021).

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2 38. Wells Fargo tells military customers that it has “home financing specialists” that
3 are “here to support” military borrowers. It maintains a “Wells Fargo Military Bank Center.”¹¹
4 Additionally, Wells Fargo’s military website states, “Whether you’re buying or refinancing a
5 home, responding to PCS orders, or simply researching VA loan benefits, our home financing
6 specialists are here to support you.”¹² Defendants touted themselves as a source of trusted
7 information for servicemembers about SCRA benefits and VA backed loans.

8 **B. Military borrowers are entitled to special legal protections.**

9 39. C.F.R. § 38.4300-93 and the VA Servicic Handbook,¹³ which is a handbook
10 provided to servicicers by the VA itself, provide special legal protections to military borrowers
11 with a VA-backed loan. Servicicers owe these borrowers a higher duty of care and disclosure,
12 which include but are not limited to specific methods of keeping borrowers informed, quality
13 control procedures, avoiding foreclosure whenever possible, explaining all loss mitigation
14 options, continuing loss mitigation throughout the foreclosure process, exhausting all loss
15 mitigation efforts before foreclosure, not allowing the final payment to be more than twice the
16 amount of the preceding installments, providing special options to borrowers in distress as the
17 result of a disaster, the right to prepay, and allowing prepayments to be reapplied to prevent
18 subsequent default.

19 40. The VA also provides requires loan servicicers to give special protections to
20 military borrowers with a VA-backed loan under the CARES Act. The VA requires that
21 “servicicers are not to require a borrower who receives a CARES Act forbearance to make a lump

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23 ¹¹ <https://www.wellsfargo.com/mortgage/manage-account/payment-help/military> (last visited January 28, 2021).

24 ¹² <https://www.wellsfargo.com/military> (last visited January 28, 2021).

¹³ Available at https://www.benefits.va.gov/WARMS/M26_4.asp (last visited January 28, 2021).

1 sum payment, equating to what would have been due if a forbearance was not in effect, after the
2 forbearance period ends.” Veterans Benefits Administration Department of Veterans Affairs,
3 Circular 26-20-33, (Sept. 14, 2020).¹⁴ The VA also requires that servicers not modify the existing
4 loan to apply a deferment. *Id*

5 41. Under the SCRA, servicemembers are entitled to a year of mortgage protection
6 after returning from active duty, regardless of whether the servicemember notified the mortgage
7 lender or servicer of their military status. 50 U.S.C. § 3953(c).

8 42. Moreover, the VA provides financial counseling to help veterans and military
9 borrowers with a VA loan. As the VA website explains:

10 **Can I get VA financial counseling to help avoid foreclosure?**

- 11
 - **If you’re a Veteran or the surviving spouse of a Veteran**, we’ll provide
12 financial counseling—even if your loan isn’t a VA direct or VA-backed loan
 - **If you have a VA direct or VA-backed loan**, you can contact us anytime to
13 request that we assign a VA loan technician to your loan. Our technicians can
14 offer you financial counseling and help you deal with your servicer (or work with
you directly in the case of a VA direct loan).¹⁵

15 **C. The CARES Act**

16 43. In response the COVID-19 outbreak, on March 27, 2020, Congress passed the
17 CARES Act. A component of the CARES act aid package was designed to assist American
18 homeowners with federally backed mortgages who were in distress as a result of the COVID-19
19 pandemic.

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24 ¹⁴ Available at https://www.benefits.va.gov/HOMELOANS/documents/circulars/26_20_33.pdf (last visited January 28, 2021).

¹⁵ <https://www.va.gov/housing-assistance/home-loans/trouble-making-payments/> (last visited January 28, 2021).

1 44. Amongst other things, the CARES Act provided homeowners with Government
 2 Sponsored Enterprises (“GSE”) loans experiencing financial hardships because of COVID-19
 3 with the option to request up to 180 days of forbearance on their mortgage. Specifically, Section
 4 4022(b) provides in relevant part that:

5 (1) IN GENERAL.—During the covered period [beginning
 6 February 15, 2020 and ending on June 30, 2020], a
 7 borrower with a Federally backed mortgage loan
 8 experiencing a financial hardship due, directly or indirectly,
 9 to the COVID-19 emergency *may request* forbearance on
 10 the Federally backed mortgage loan, regardless of
 11 delinquency status, by—

 (A) submitting a request to the borrower’s
 9 servicer and

 (B) affirming that the borrower is experiencing a
 10 financial hardship during the COVID-19 emergency.

11 (2) DURATION OF FORBEARANCE.— *Upon a*
 12 *request by a borrower for forbearance* under paragraph (1),
 13 such forbearance shall be granted for up to 180 days, and shall
 14 be extended for an additional period of up to 180 days *at the*
 15 *request of the borrower*, provided that, *at the borrower’s*
 16 *request*, either the initial or extended period of forbearance may
 17 be shortened.

18 *See* CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT, PL 116-136, March
 19 27, 2020, 134 Stat. 281, § 4022(b) (emphasis added).

20 45. Section 4022(c) of the CARES Act provides in relevant part that:

21 *Upon receiving a request for forbearance from a borrower*
 22 under subsection (b), the servicer shall with no additional
 23 documentation required other than the borrower’s
 24 attestation to a financial hardship caused by the COVID-
 19 emergency and with no fees, penalties, or interest
 (beyond the amounts scheduled or calculated as if the
 borrower made all contractual payments on time and in full
 under the terms of the mortgage contract) charged to the
 borrower in connection with the forbearance, provided the
 forbearance up to 180 days, which may be extended for an
 additional period of up to 180 days at the request of the
 borrower, provided that, the borrower’s request for an
 extension is made during the covered period, and, at the
 borrower’s request, either the initial or extended period of

forbearance may be shortened.

Id., § 4022(c) (emphasis added).

46. The plain language of these provisions makes it abundantly clear that participation in a mortgagee's or servicer's mortgage COVID-19 forbearance program is voluntary and only to be initiated at the request of the mortgagor clients.

47. For mortgagors to avail themselves of the COVID-19 mortgage forbearance option, they were instructed to contact their loan servicer to obtain information and, if appropriate, request forbearance.¹⁶

48. The CARES Act also provides that lenders are not permitted to report forborne payments to the credit bureaus, which means that borrowers who request forbearance are not supposed to see any impact on their credit scores as a result of their participation in forbearance programs. *See* CORONAVIRUS AID, RELIEF, AND ECONOMIC SECURITY ACT, PL 116-136, March 27, 2020, 134 Stat. 281, § 4021.

49. Wells Fargo stated publicly in July 2020 that it had deferred 2.5 million payments for consumer and small business customers since the start of the pandemic.¹⁷

D. Wells Fargo Unilaterally and/or Without Informed Consent Opted Homeowners into its Forbearance Program.

50. Since the passage of the CARES Act, Defendants unilaterally placed borrowers into their mortgage forbearance programs without informed or lawfully required consent.

¹⁶ <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/request-forbearance-or-mortgage-relief/> (last visited January 27, 2021).

¹⁷ <https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/> (last visited January 27, 2021).

1 51. Thousands of homeowners have been put into mortgage forbearance programs
2 they did not knowingly request, causing substantial problems for those homeowners, including
3 preventing homeowners from taking out new home loans or refinancing their existing mortgages.

4 52. Wells Fargo’s practice of placing unwitting customers into forbearance has
5 prompted hundreds of consumer complaints. For instance, complaints filed with the CFPB have
6 risen dramatically since the beginning of the pandemic, and many of those have come from
7 homeowners who complain that they were placed in forbearance without requesting it.¹⁸

8 53. In particular, as one consumer told the CFPB, a Wells Fargo employee admitted
9 “that the system is like a ‘hair trigger’” automatically placing loans into forbearance “even
10 though I did nothing to start a forbearance.”¹⁹

11 54. Wells Fargo has not denied these allegations, stating via its spokesperson Tom
12 Goyda that “[i]n the spirit of providing assistance, we may have misinterpreted customers’
13 intentions in a small number of cases.”²⁰

14 55. The actions taken by Defendants were in direct contravention of the CARES Act
15 requirements that forbearances be provided in response to the request of the borrower, and with
16 an attestation of hardship due to COVID-19. In many instances, the borrowers received no notice
17 that they had been placed into forbearance at all, and in those instances where borrowers
18 received some notice, it was woefully inadequate under the requirements of RESPA, 12 U.S.C.
19 §§ 2601 et seq.

22 ¹⁸ <https://www.cnn.com/2020/05/20/success/mortgage-forbearance-homeowner-complaints-coronavirus/index.html>
(last visited January 27, 2021).

23 ¹⁹ <https://www.consumerfinance.gov/data-research/consumer-complaints/search/detail/3658898> (last visited January
27, 2021).

24 ²⁰ <https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/> (last visited January
27, 2021).

1 **E. Wells Fargo Failed to Properly Manage Mortgages Once in Forbearance.**

2 56. Wells Fargo's illegal actions went beyond enrolling unwitting customers into its
3 forbearance program. Once customers were wrongfully enrolled into the program, Wells Fargo
4 continued to act negligently and unlawfully by (1) failing to properly apply payments made by
5 customers to the mortgage; (2) failing to properly report payments made by customers to credit
6 agencies; and (3) failing to provide accurate and legally sufficient period statements to these
7 customers.

8 **F. Wells Fargo Benefits Financially from its Practice of Unilaterally Opting**
9 **Homeowners into its Forbearance Program.**

10 57. Wells Fargo is compensated financially by the various federal agencies on whose
11 behalf its service borrowers' loans when it filed forbearance notices and when it completes loan
12 retention workout options with borrowers whose loans have been placed into forbearance
13 pursuant to the CARES Act.

14 58. For every Fannie Mae and Freddie Mac mortgage loan Wells Fargo places into
15 forbearance, Wells Fargo stands to receive a minimum of \$500 and up to \$1,000 in incentive
16 payments, depending on which workout option Wells Fargo's borrower accepts at the conclusion
17 of the forbearance term.

18 59. For Ginnie Mae Loans Wells Fargo places into forbearance, Wells Fargo is also
19 entitled to receive incentive compensation for post-forbearance loan workouts, although the
20 structure for calculating the amount of these incentive payments and the available workout
21 options are different (in immaterial ways) for Ginnie Mae loans, depending on whether the loan
22 was originated by the VA, the USDA, or the FHA.

23 60. Wells Fargo's portfolio of Fannie Mae and Freddie Mac loans carries principal
24 and interest payment advance obligations that are similar to its advance obligations for Ginnie

1 Mae loans, with one important difference specifically applicable to loans in CARES Act
2 forbearance: Wells Fargo's principal and interest advance obligations on Fannie Mae and
3 Freddie Mac loans that received a CARES Act forbearance terminate after Wells Fargo makes
4 four advances of borrowers' missed principal and interest payments.

5 61. So long as Fannie Mae and Freddie Mac loans are placed into a CARES Act
6 forbearance, Wells Fargo is not required to repurchase delinquent Fannie Mae and Freddie Mac
7 loans in order to be allowed to cease making principal and interest advances. Instead, after Wells
8 Fargo makes advances for four monthly principal and interest payments missed by the borrower
9 on a loan that Wells Fargo has placed in a CARES Act forbearance, under applicable Fannie
10 Mae and Freddie Mac servicing guidelines, Wells Fargo no longer has any further obligation to
11 advance principal and interest payments on the loan.

12 62. Therefore, regardless of whether a loan is backed by Ginnie Mae, Fannie Mae, or
13 Freddie Mac, Wells Fargo benefits from placing loans into CARES Act forbearances by limiting
14 its exposure to principal and interest advance obligations in the event of future defaults.

15 **G. Unwanted Forbearance Injures Consumers**

16 63. Wells Fargo has engaged in a practice of unilaterally opting mortgagors into
17 unwanted forbearance programs which has caused an injury to those homeowners.²¹

18 64. Even if Wells Fargo do not report forborne accounts as delinquent, there are
19 nonetheless many practical and immediate impacts of participating in a mortgage forbearance
20 program; mainly, participation in a forbearance program prohibits homeowners from taking out
21 new loans or refinancing their existing mortgages.

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24 ²¹ <https://www.cnn.com/2020/05/20/success/mortgage-forbearance-homeowner-complaints-coronavirus/index.html>
(last visited January 27, 2021).

1 65. Wells Fargo has made note on the reports they send to credit reporting agencies
2 that the homeowners who they have placed into forbearance – including those who never
3 requested it – have suspended their mortgage payments.²²

4 66. Fannie Mae and Freddie Mac, which, along with the Federal Housing
5 Administration and the Department of Veterans Affairs, fund or insure the vast majority of
6 mortgages from lenders, do not allow borrowers with a loan in forbearance to either refinance or
7 to obtain a new loan until one year after the loan payments are up to date again.

8 67. Wells Fargo has also failed to report payments made by borrowers to the credit
9 reporting agencies after those borrowers discover they have been placed into forbearance and
10 commence making payments again.

11 68. Some individuals, including Plaintiff, after learning that their mortgages had been
12 placed into forbearance noticed that their credit scores had declined as a result of Wells Fargo's
13 illegal actions.

14 **H. Plaintiff Brian Echard**

15 69. Plaintiff Brian Echard has a mortgage serviced by Wells Fargo. Wells Fargo
16 collects payments and performs services for Mr. Echard's mortgage secured to his primary
17 residence located in Westerville, Ohio.

18 70. Mr. Echard is a military veteran. He began his military career as an Army ROTC
19 cadet. After graduating from college in 1996, he was commissioned as second lieutenant in the
20 Army Reserves. In 2001, he was considering ending his military career at the end of his eight-
21 year contractual obligation to the U.S. Army. However, as a result of the terrorist attack on

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24 ²² <https://www.cnn.com/2020/05/12/coronavirus-some-homeowners-getting-mortgage-bailouts-by-mistake.html>
(last visited January 27, 2021).

1 September 11, 2001, he chose to remain in the military and commit to accepting a company
2 commander role. Mr. Echard and his unit were mobilized in 2003 and deployed to Iraq in 2004,
3 where they spent 385 days. His unit was the last unit in Operation Iraqi Freedom II to leave the
4 theater of war. Mr. Echard transitioned back to civilian life in 2005 after returning from
5 deployment.

6 71. Mr. Echard's mortgage is a VA backed mortgage.

7 72. Around March 31, 2020, Mr. Echard submitted an inquiry to Wells Fargo to ask
8 about payment deferment options, as he was concerned about his future financial security in light
9 of the pandemic.

10 73. On March 31, 2020, Wells Fargo responded via email encouraging Mr. Echard to
11 "view the self-service options available for your account on wells Fargo.com or through the Wells
12 Fargo Mobile app" Despite the assurance that Wells Fargo gives to military borrowers, it
13 offered him no "support." It did not explain to him the rights of military borrowers. It did not
14 connect him to the supposed "dedicated team" that was supposed to help military borrowers
15 attain sustainable homeownership.

16 74. Sometime between April 2 and April 8, 2020, Mr. Echard logged into his Wells
17 Fargo account on the Wells Fargo website. During that website visit, Mr. Echard did not
18 knowingly agree to a forbearance. As a former bank employee, he understands the significance
19 of a forbearance and would not have knowingly signed up for forbearance on his mortgage. Yet,
20 that website visit caused Wells Fargo to place him into forbearance.

21 75. On April 8, 2020, Mr. Echard received a letter from Wells Fargo which confirmed
22 his "short-term payment relief." The three-page letter uses the term "payment relief" and again
23 does not use the term "forbearance."

1 76. On July 21, 2020, Mr. Echard learned he was in forbearance when he attempted to
2 refinance his mortgage through NewDay USA and was denied.

3 77. On August 14, 2020, Mr. Echard received a letter from Wells Fargo. The cover
4 sheet to this letter stated, “Due to the COVID-19 crisis, we’ve provided you with short-term
5 payment suspension (forbearance). We are legally required to send you the enclosed letter. This
6 letter is for your information only.” (emphasis in original). This letter was specifically “For
7 customers with VA loans.” It also states, “We would also like to notify you of the availability of
8 homeownership counseling, and any rights you or your dependents have under the
9 Servicemembers Civil Relief Act.” Thus, it is clear that Wells Fargo understood that Mr. Echard
10 was a military borrower.

11 78. On September 9, 2020, Mr. Echard received a letter from Wells Fargo in response
12 to a complaint, stating, “We apologize for any confusion this process may have caused you.” The
13 letter contains inconsistencies. On the one hand it states, an ‘account in forbearance’ code on his
14 credit report “does not affect your FICO credit score.” But it acknowledged that “the fact that
15 your account is in forbearance may affect your ability to qualify for new credit or refinance.”

16 79. After Mr. Echard learned that his account had been wrongfully placed in
17 forbearance, he resumed payments on his mortgage. However, Wells Fargo failed to properly (1)
18 apply those payments to the mortgage; (2) report those payments to credit agencies; or (3)
19 calculate information on subsequent periodic payments.

20 80. On December 1, 2020, Mr. Echard’s FICO Score 8 dropped by at least 74 points
21 from 747 to 673.

22 81. Because of the reduction in Mr. Echard’s FICO Score, he has been unable to
23 qualify for the best refinancing rates.
24

1 **I. Class Action Allegations**

2 82. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure 23(b)(3) on
3 behalf of himself and all others similarly situated. He, along with other class members who may
4 be named as class representatives at the time a motion is filed to certify a proposed class, will
5 represent the following classes:

6 **Nationwide Military Class:**

7 All military customers with a mortgage loan serviced by Wells Fargo whose mortgage
8 was placed into Wells Fargo's COVID-19 Mortgage Forbearance Program without their
informed and lawful consent.

9 **Nationwide Class:**

10 All customers with a mortgage loan serviced by Wells Fargo whose mortgage was placed
11 into Wells Fargo's COVID-19 Mortgage Forbearance Program without their informed and
lawful consent.

12 **Ohio Class:**

13 All Ohio customers with a mortgage loan serviced by Wells Fargo whose mortgage was
14 placed into Wells Fargo's COVID-19 Mortgage Forbearance Program without their informed
and lawful consent.

15 83. Numerosity- Members of each of the three proposed classes are so numerous that
16 joinder of all members is impracticable. The disposition of their claims in a class action will
17 provide substantial benefits to both parties and the Court. Upon information and belief,
18 Defendants, either directly or through affiliated entities, are in possession of the names and
19 addresses of all class members. While the exact number of Class Members remains unknown at
20 this time, upon information and belief, there are thousands of putative Class Members
21 throughout the United States who are generally ascertainable through discovery. The information
22
23
24

1 currently known to Plaintiff that Wells Fargo has received at least 1,600 complaints is already
2 sufficient to support the numerosity requirement for a class action.²³

3 84. Class treatment is particularly appropriate here because the national presence of
4 Defendants means that they conduct business in every jurisdiction in the United States. Further,
5 this matter involves multiple federal statutes which were extensively and harmfully misapplied
6 by Defendants.

7 85. Commonality- This action involves common questions of law and fact, which
8 predominate over any questions affecting individual Class Members. These common legal and
9 factual questions include, but are not limited to, the following:

- 10 a. Whether Defendants improperly applied the SCRA to Nationwide Military Class
11 Members mortgage accounts;
- 12 b. Whether Defendants owed and breached duties owed to the Nationwide Military
13 Class, including the duty of good faith and fair dealing and/or fiduciary duties;
- 14 c. Whether Wells Fargo negligently or intentionally enrolled customers in
15 forbearance programs without their informed consent;
- 16 d. Whether Wells Fargo's actions or inactions violated the consumer protection
17 statutes invoked herein;
- 18 e. Whether the Plaintiff and putative class were damaged by Wells Fargo's conduct
19 and, if so, the appropriate amount of damages;
- 20
- 21
- 22
- 23

24 ²³ <https://www.bankingdive.com/news/wells-fargo-forbearance-mortgage-payments/582284/> (last visited January 27, 2021).

f. Whether, because of Wells Fargo's misconduct, Plaintiff and the putative Class Members are entitled to equitable and declaratory relief, and if so, the nature of such relief;

86. Typicality- The representative Plaintiff's claims are typical of the claims of members of the Classes. Plaintiff and all the members of the Classes have been injured by the same wrongful practices of Wells Fargo. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of members of the Classes and are based on the same legal theories.

87. Adequacy- Plaintiff will fully and adequately assert and protect the interests of the Classes, and has retained class counsel who are experienced and qualified in prosecuting class actions, and in particular, class actions brought under the SCRA. Neither the Plaintiff nor his attorneys have any interests contrary to or in conflict with the Classes.

88. Predominance and Superiority- A class action is superior to all other available methods for the fair and efficient adjudication of this lawsuit, because individual litigation of the claims of all Class Members is economically unfeasible and procedurally impracticable. While the aggregate damages sustained by the Class Members are likely in the millions of dollars, the individual damages incurred by each Class Member are too small to warrant the expense of individual suits. The likelihood of individual Class Members prosecuting their own separate claims is remote, and even if every member of the Classes could afford individual litigation, the court system would be unduly burdened by individual litigation of such cases. Moreover, active duty servicemembers who are part of the Nationwide Military Class and who are deployed do not have the time or resources to undertake individual litigation from their deployment.

89. The nature of this action and the nature of laws available to Plaintiff and the Class make the use of the class action device a particularly efficient and appropriate procedure to

1 afford relief to Plaintiff and the Class Members for the wrongs alleged because Wells Fargo
2 would necessarily gain an unconscionable advantage since they would be able to exploit and
3 overwhelm the limited resources of each individual Class Member with superior financial and
4 legal resources; the costs of individual suits could unreasonably consume the amounts that would
5 be recovered; proof of a common course of conduct to which Plaintiff was exposed is
6 representative of that experienced by the Class and will establish the right of each member of the
7 Class to recover on the cause of action alleged; and individual actions would create a risk of
8 inconsistent results and would be unnecessary and duplicative of this litigation.

9 **V. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **Breach of Implied Covenant of Good Faith and Fair Dealing**

12 90. Plaintiff incorporates each and every allegation contained in the preceding
13 paragraphs as if set forth again herein.

14 91. Plaintiff brings this claim on behalf of himself and all three classes.

15 92. Plaintiff, the Class Members, and Wells Fargo were parties or beneficiaries to
16 contracts that contain an implied covenant of good faith and fair dealing. The implied covenant
17 obligates the parties to cooperate so that each party may obtain the full benefit of performance of
18 the contract. The duty of good faith and fair dealing means that parties may not interfere with or
19 fail to cooperate in the other party's performance. Neither party may engage in conduct that
20 impairs or prevents the other party from enjoying the benefits of the contract or engage in
21 conduct that prevents the other party from performing under the contract.

22 93. Wells Fargo owed the Nationwide Military Class members an additional duty of
23 good faith, as these borrowers are entitled to special protections for VA backed loans, under the
24

1 SCRA, and additional rights and care under Wells Fargo's own promises made to military
2 borrowers.

3 94. Wells Fargo knows which of its customers are military borrowers and knows that
4 such military borrowers are entitled to additional rights and care.

5 95. Military borrowers have a reasonable expectation that Wells Fargo will take
6 additional care to inform them of their rights and options before placing them into a program that
7 will negatively impact their financial status and their ability to avoid foreclosure. Military
8 borrowers received such promises of care from Wells Fargo and are parties to a contract that
9 requires Wells Fargo to take additional care.

10 96. By failing to meet its obligations of candor and care, and then placing Plaintiff
11 and Class Members in forbearance without their informed and legal consent, Wells Fargo
12 frustrated and interfered with their ability to perform under the contract and failed to cooperate
13 with the Class Members' performance of their contracts.

14 97. No reasonable party would expect that Wells Fargo would put their mortgage into
15 forbearance without their informed and legal consent. Military borrowers have additional
16 reasons to believe this would not occur.

17 98. Wells Fargo engaged in conduct that was contrary to the spirit of the contracts and
18 the Class Members' rights thereunder. Wells Fargo lacked diligence in performing its duties,
19 acted recklessly in its servicing of the Class Members' mortgages, and abused its power by
20 placing loans in forbearance without informed and legal consent for its own interest.

21 99. By its actions, Wells Fargo engaged in conduct that was contrary to the spirit of
22 the contracts, lacked diligence, and constituted an abuse of its power.

23 100. Wells Fargo knew, reasonably should have known, or recklessly disregarded their
24 duty to treat Plaintiff and Class Members fairly and deal with them in good faith.

- Defendants volunteered advice to servicemembers and their families with the intent that Defendants would become their trusted advisor on financial and non-financial matters. The website for Defendants' proprietary program, wells Fargo.com/military, states, for example: "Whether you're buying or refinancing a home, responding to PCS orders, or simply researching VA loan benefits, our home financing specialists are here to support you." Defendants touted themselves as a source of trusted information for servicemembers about SCRA benefits and VA backed loans.
- The SCRA reflects a Congressional determination that servicemembers cannot and should not be required to protect their own financial interests while serving full time in the U.S. military. By participating in the SCRA program and specifically stating that "we offer expanded mortgage benefits that go beyond what the SCRA requires."²⁵ Defendants have acknowledged this unequal relationship and taken on fiduciary duties.

107. Defendants have breached the fiduciary duties owed to Plaintiff and the Nationwide Military Class, causing damages and entitling Plaintiff and the Nationwide Military Class to restitution and other equitable remedies.

THIRD CAUSE OF ACTION

Violation of the Servicemembers Civil Relief Act

108. Plaintiff incorporates each and every allegation contained in the preceding paragraphs as if set forth again herein.

²⁵ <https://www.wellsfargo.com/mortgage/manage-account/payment-help/military/> (last visited January 28, 2021).

1 109. Plaintiff brings this claim on behalf of SCRA-eligible members of the Nationwide
2 Military Class.

3 110. The SCRA-eligible members of the Nationwide Military Class have a private
4 right of action for violations of the SCRA pursuant to 50 U.S.C. §§ 3901 *et seq.* (formerly 50
5 U.S.C. App. §§ 501 *et seq.*).

6 111. Putting current or recent active duty servicemembers into forbearance is counter
7 to the provision of the SCRA giving one year of security against sale or foreclosure. 50 U.S.C. §
8 3953.

9 112. Under 50 U.S.C. § 3919, Wells Fargo may not “affect certain future financial
10 transactions.” A servicemember’s request for a stay, postponement, or suspension of a payment
11 of a civil obligation or liability under the SCRA may not lead to any “determination by a lender
12 or other person that the servicemember is unable to pay the civil obligation or liability in
13 accordance with its terms.” 50 U.S.C. § 3919(1). Such a request also may not lead to “[a]n
14 adverse report relating to the creditworthiness of the servicemember by or to a person engaged in
15 the practice of evaluating consumer credit information.” *Id.* at (3)

16 113. Defendants violated the SCRA by placing servicemember accounts in forbearance
17 without their request or upon a request for financial assistance. 50 U.S.C. § 3919(1).

18 114. Defendants also violated the SCRA when they created a note on the Nationwide
19 Military Class Members’ credit reports that the accounts were in forbearance, and when they
20 failed to accurately report mortgage payments made. 50 U.S.C. § 3919(3).

21 **FOURTH CAUSE OF ACTION**

22 **Breach of Contract**

23 115. Plaintiff incorporates each and every allegation contained in the preceding
24 paragraphs as if set forth again herein.

1 customers on notice. Moreover, when Plaintiff and Class Members continued to make monthly
2 mortgage payments after learning of the forbearance status, they did so with the understanding
3 and expectation that doing so would result in these loans being serviced in the ordinary course of
4 business.

5 125. Plaintiff's and Class Member's reliance on Wells Fargo's material omissions of
6 fact were justified and reasonable, as Plaintiff and Class Members had no basis to assume and
7 were not on notice that Wells Fargo would defraud them by placing their loans into forbearance
8 status without authorization or informed consent. Further, no common law, statute, or other
9 agreement among Plaintiff and Class Members and their mortgage lender and/or Wells Fargo
10 authorized Wells Fargo to place these borrowers' loans into forbearance without their informed
11 consent.

12 126. Plaintiff and Class Members were injured by Wells Fargo's material omissions of
13 fact and fraudulent placement of their loans into forbearance status, experiencing credit damage,
14 and inability to refinance at historically low rates, loss of access to new credit and existing credit
15 cards and home equity lines of credit, reputational damage, frustration, and various out-of-pocket
16 costs and other pecuniary damages and general damages.

17 **SIXTH CAUSE OF ACTION**

18 **Violations of Truth in Lending Act, 15 U.S.C. § 1601 et seq. (TILA)**

19 127. Plaintiff incorporates each and every allegation contained in the preceding
20 paragraphs as if set forth again herein.

21 128. Plaintiff brings this claim on behalf of himself and all three classes.

22 129. 12 C.F.R. § 226.36(i) prohibits a servicer of a consumer credit transaction secured
23 by a consumer's principal dwelling from failing to "credit a payment to the consumer's loan
24

1 account as of the date of receipt, except when a delay in crediting does not result in any charge to
2 the consumer or in the reporting of negative information to a consumer reporting agency . . .”

3 130. 12 C.F.R. § 1026.36(c)(1) prohibits servicers of a closed-end consumer credit
4 transaction, secured by a consumer’s principal dwelling, from failing to credit a periodic
5 payment to the consumer’s loan account as of the date of receipt, with some exceptions not
6 applicable here.

7 131. Wells Fargo has failed to credit periodic payments to Plaintiff and other Class
8 Members’ loan accounts as of the date their periodic payments were received.

9 132. Pursuant to 12 C.F.R. § 1026.41, a servicer of a closed-end consumer credit
10 transaction secured by a dwelling (a “mortgage loan”) shall provide the consumer, for each
11 billing cycle, a periodic statement meeting specifically enumerated requirements, including but
12 not limited certain details related to the amount due, an explanation of the amount due, and a past
13 payment breakdown.

14 133. Defendants violated 12 C.F.R. § 1026.41 by providing periodic statements on
15 mortgage loans to Plaintiff and other Class Members which do not conform to the timing and
16 structure required, and which inaccurately reflect and/or omit information required by the
17 regulation, including information related to forbearance and its effects.

18 134. TILA, 15 U.S.C. § 1640, provides a private right of action for violations of these
19 provisions, which includes suits against entities that violate TILA and previously owned the loan
20 obligation. *See* 15 U.S.C. § 1640(f).

21 135. Wells Fargo has demonstrated a pattern and practice of failing to comply with
22 Regulation Z because Wells Fargo has engaged in a practice of placing borrowers in unwanted
23 and unauthorized forbearance agreements on a nation-wide basis, failing to properly credit
24 payments, and failing to provide accurate and legal periodic statements.

- Wells Fargo has failed to properly advise, inform and assist Plaintiff and Class Members of curative actions including the right to appeal any denials, in violation of 12 C.F.R. § 1024.41;
- Wells Fargo has deceptively placed Plaintiff and Class Members into their “COVID-19 Forbearance Plan” without informed prior consent or approval, in violation of 12 C.F.R. § 1024.41;
- Wells Fargo has failed to maintain continuity of contact for Plaintiff and Class Members, in violation of 12 C.F.R. § 1024.40;
- Wells Fargo failed to maintain a system to “advise borrowers how to cure delinquencies [and] protect their ... credit rating,” in violation of 38 CFR Sc. 36.4278.

141. Wells Fargo has placed Plaintiff’s and other Class Members’ mortgage loan accounts into forbearance and/or extended existing forbearance periods without Plaintiff’s and Class Members’ knowledge, informed consent or approval in violation of the Real Estate Settlement Procedures Act.

142. Wells Fargo has failed to apply Plaintiff’s and Class Members’ monthly mortgage payments as of the date they came due and failed to report publicly that payments made by Plaintiff and Class Members were received and applied.

143. Wells Fargo has demonstrated a pattern and practice of failing to comply with Regulation X, and failing to comply with related loss mitigation rules, because Wells Fargo has engaged in a practice of placing borrowers in unwanted and unauthorized forbearance agreements on a nation-wide basis.

144. As a proximate result of Wells Fargo’s unlawful actions, Plaintiff and Class Members have been injured. Plaintiff and Class Members have suffered credit damage, loss of

1 access to credit, reputational damage, frustration, outrage, and various other pecuniary and
2 general damages.

3 **EIGHTH CAUSE OF ACTION**

4 **Violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681 et seq. (FCRA)**

5 145. Plaintiff incorporates each and every allegation contained in the preceding
6 paragraphs as if set forth again herein.

7 146. Plaintiff brings this claim on behalf of himself and all three classes.

8 147. Plaintiff Echard is a “consumer” as that term is defined by 15 U.S.C. § 1681a(c).
9 Wells Fargo is a “furnisher” of consumer information as defined by 12 CFR. 1022.41(c) and as
10 described throughout the Fair Credit Reporting Act (“FCRA”).

11 148. Wells Fargo regularly reports consumer account information to the credit
12 reporting agencies for inclusion in credit reports.

13 149. Wells Fargo willfully violated 15 U.S.C. § 1681s-2 by informing credit agencies
14 that Plaintiff and Class Members’ mortgage accounts were in forbearance when those consumers
15 did not make affirmative, legal, or informed requests to be placed into forbearance.

16 150. Wells Fargo also willfully violated 15 U.S.C. § 1681s-2 by failing to adequately
17 investigate and correct inaccurate credit reporting information with the credit reporting agencies
18 where Plaintiff and class members made mortgage payments.

19 151. Wells Fargo knew, or should have known, that Plaintiff and the Class Members
20 did not request or affirmatively and legally consent to the mortgage loan forbearances that Wells
21 Fargo reported to the credit reporting agencies.

22 152. Wells Fargo knew, or should have known, that Plaintiff and the Class Members
23 had made mortgage payments after being placed into forbearance, and that these mortgage
24 payments should be reported to credit agencies.

1 153. The forbearance notation on the Class Members' credit reports clearly indicates to
2 potential creditors or other third parties that the class members experienced some sort of
3 financial hardship. These forbearance notations adversely affect class members' ability to obtain
4 credit.

5 154. Failing to report payments made on Plaintiff and Class Members' mortgage
6 accounts to credit agencies negatively affected these consumers credit scores.

7 155. Wells Fargo has breached its duties as set forth in 15 U.S.C. § 1681s-2 by failing
8 to adequately investigate and fully correct inaccurate credit reporting information with the credit
9 reporting agencies following Plaintiff's dispute of the credit reporting errors or Plaintiff's
10 informing Wells Fargo of the fraudulent placement of the account in forbearance.

11 156. Wells Fargo knew that the presence of the forbearance notations in the Class
12 Members' credit reports would damage the Class Members' ability to obtain new credit, which
13 may be essential to a consumer's daily life.

14 157. Wells Fargo's failure to report its receipt of payments made by Plaintiff and the
15 Class Members during the period in which Wells Fargo improperly furnished information to the
16 Credit Reporting Agencies indicating that their loans were in forbearance status also adversely
17 affects Plaintiff's and the Class Members' ability to obtain credit, including but not limited to
18 preventing and/or significantly impeding borrowers' ability to refinance their home mortgage
19 loans and/or to borrow against the equity in their homes.

20 158. Wells Fargo failed to promptly delete, modify, or block reporting of inaccurate,
21 incomplete, or unverifiable information in response to each complaint raised by Plaintiff and the
22 Class Members.

23 159. Wells Fargo failed to fully correct the information it supplied to the Credit
24 Reporting Agencies regarding Plaintiff's and the Class Member's accounts.

1 160. Plaintiff and the Class Members have incurred actual damages and have suffered
2 physically, mentally, and emotionally as a result of Wells Fargo's willful violations of the Fair
3 Credit Reporting Act.

4 161. Based on Wells Fargo's violations of 15 U.S.C. § 1681s-2, Plaintiff and the Class
5 Members are entitled to actual damages, costs, and attorneys' fees pursuant to 15 U.S.C. §
6 1681o.

7 162. Moreover, as a result of each and every negligent violation of the FCRA, Plaintiff
8 and the Class Members are entitled to statutory damages and reasonable attorneys' fees pursuant
9 to 15 U.S.C. § 1681o.

10 163. Plaintiff and the Class Members are also entitled to statutory damages, punitive
11 damages, and reasonable attorneys' fees for each of Wells Fargo's willful violation of the FCRA
12 pursuant to 15 U.S.C. § 1681n(a).

13 **NINTH CAUSE OF ACTION**

14 **Unjust Enrichment**

15 164. Plaintiff incorporates each and every allegation contained in the preceding
16 paragraphs as if set forth again herein.

17 165. Plaintiff brings this claim on behalf of himself and all three classes.

18 166. Plaintiff and the Class Members have conferred a benefit upon Wells Fargo which
19 received benefits by placing Plaintiff and Class Member's loans into forbearance without their
20 informed and legal consent. By placing Plaintiff's and Class member's mortgages in forbearance,
21 Wells Fargo continued to hold and service those mortgage loans, preventing Plaintiff and Class
22 members refinancing with another institution, and thus increasing the value of the mortgage
23 servicing rights.
24

1 (2) failing to properly report payments actually made to credit agencies; and (3) failing to
2 provide accurate and legally sufficient periodic statements.

3 176. Defendants knew, reasonably should have known, or recklessly disregarded their
4 duty to treat Plaintiff and the Class Members fairly and deal with them in good faith.

5 177. Defendants' negligence and breach of their duties was the proximate cause of
6 damages sustained by the Plaintiff and the Class Members.

7 **ELEVENTH CAUSE OF ACTION**

8 **Violation of the Ohio Deceptive Trade Practices Act**

9 178. Plaintiff incorporates each and every allegation contained in the preceding
10 paragraphs as if set forth again herein.

11 179. Plaintiff brings this claim on behalf of himself and the Ohio Class.

12 180. Ohio's Deceptive Trade Practices Act ("DTPA"), Ohio Revised Code §§ 4165 *et*
13 *seq.* prohibits deceptive trade practices.

14 181. Wells Fargo is a "person" as defined by Ohio Revised Code § 4165.01(D)

15 182. The DTPA provides in part that a "person engages in a deceptive trade practice
16 when, in the course of the person's business, vocation, or occupation, the person . . .
17 represents that goods or services have . . . characteristics . . . , uses, [or] benefits . . . that they do
18 not have." ORC § 4165.02(A)(7).

19 183. Wells Fargo violated the statute when it falsely represented services available for
20 mortgage debt assistance which it did not provide.

21 184. For example, Wells Fargo deceptively represented on its website that it had
22 services for assistance for mortgage relief, when in fact it was deceptively and without
23 authorization, putting accounts of those inquiring about relief services into forbearance.
24

186. As a direct result of Wells Fargo's deceptive practices, Plaintiff and class members have suffered and will continue to suffer actual damages.

On behalf of themselves and all other persons similarly situated, Plaintiff respectfully prays
for the following relief:

- COMPLAINT – CLASS ACTIONJURY DEMAND - 38

- i. The imposition of a constructive trust containing all assets, funds, and property derived from Defendants' wrongful acts, with Defendants serving as constructive trustees for the benefit of Plaintiff and class members;
- j. An accounting of all assets, funds, revenues, and profits received and retained by Defendants as a result of their improper actions;
- k. Award appropriate individual relief as requested above; and
- l. Grant such other relief as this Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demand a trial by jury on all issues so triable.

RESPECTFULLY SUBMITTED this 28th day of January, 2021.

SMITH & LONEY, PLLC

By: s/Knoll Loney

Knoll Loney, WSBA # 23457

s/Alyssa Englebrecht

Alyssa Englebrecht, WSBA #46773

s/Meredith Crafton

Meredith Crafton, WSBA # 46558

s/Marc Zemel

March Zemel, WSBA #44325

s/Savannah Rose

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